

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL JACKSON,

Petitioner,

v.

CASE NO. 07-13833
HONORABLE LAWRENCE P. ZATKOFF

C. EICHENLAUB,

Respondent.

**ORDER DENYING PETITIONER'S SECOND MOTION FOR ISSUANCE OF THE
WRIT AND EXTENDING THE COURT'S STAY OF THESE PROCEEDINGS**

This matter is pending before the Court on Petitioner Michael Jackson's second Motion for Issuance of the Writ. Petitioner is an inmate at the Federal Correctional Institution in Milan, Michigan. He is challenging a policy of the Federal Bureau of Prisons to limit inmates' placement in a Residential Re-entry Center ("RRC") or halfway house until the last six months or final 10% of their sentences. Petitioner claims that the Bureau's policy conflicts with a congressional directive to apply the factors enumerated in 18 U.S.C. § 3621(b) when determining whether to place an inmate in an RRC. He also claims that the regulations interpreting § 3621(b) are invalid.

Respondent argued in a responsive pleading filed on October 23, 2007, that Petitioner had not exhausted administrative remedies for his claims. The Court agreed and, on November 16, 2007, the Court denied Petitioner's first Motion for Issuance of the Writ without prejudice. The Court stated that it was holding this case in abeyance until the Bureau of Prisons completed its review of Petitioner's request for administrative relief.

On January 18, 2008, Petitioner filed the pending Motion for Issuance of Writ. Attachments

to the motion demonstrate that he has satisfied the exhaustion requirement. The Court nevertheless is reluctant to adjudicate the merits of Petitioner's claims at this time. Although four Federal Circuit Courts of Appeal have invalidated the federal regulations in question,¹ the issue remains pending before the Court of Appeals for the Sixth Circuit in *Holloway v. Marberry*, No. 07-2040 (6th Cir. 2007).

Accordingly, Petitioner's Motion for Issuance of the Writ [Doc. 7, Jan. 18, 2008], is DENIED without prejudice. This case will remain stayed pending an adjudication of the same issue by the Court of Appeals for the Sixth Circuit in *Holloway*.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: March 7, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on March 7, 2008.

s/Marie E. Verlinde
Case Manager
(810) 984-3290

¹ See *Wedelstedt v. Wiley*, 477 F.3d 1160, 1165 (10th Cir. 2007); *Levine v. Apker*, 455 F.3d 71, 87 (2d Cir. 2006); *Fults v. Sanders*, 442 F.3d 1088, 1092 (8th Cir. 2006); *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 244 (3d Cir. 2005). The First Circuit Court of Appeals recently held that the disputed regulations are a reasonable exercise of the Bureau's discretion in carrying out its duties under § 3621(b). See *Muniz v. Sabol*, __ F.3d __, __, Nos. 06-2692 and 06-2693, 2008 WL 497056, at *9 (1st Cir. Feb. 26, 2008).